

105TH CONGRESS
1ST SESSION

S. 544

To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

IN THE SENATE OF THE UNITED STATES

APRIL 9, 1997

Mr. COVERDELL (for himself, Mr. McCONNELL, Mr. ABRAHAM, Mr. SANTORUM, and Mr. ASHCROFT) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Volunteer Protection
5 Act of 1997”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 The Congress finds and declares that—

1 (1) the willingness of volunteers to offer their
2 services is deterred by the potential for liability ac-
3 tions against them and the organizations they serve;

4 (2) as a result, many nonprofit public and pri-
5 vate organizations and governmental entities, includ-
6 ing voluntary associations, social service agencies,
7 educational institutions, and other civic programs,
8 have been adversely affected by the withdrawal of
9 volunteers from boards of directors and service in
10 other capacities;

11 (3) the contribution of these programs to their
12 communities is thereby diminished, resulting in
13 fewer and higher cost programs than would be ob-
14 tainable if volunteers were participating;

15 (4) because Federal funds are expended on use-
16 ful and cost-effective social service programs, many
17 of which are national in scope, depend heavily on
18 volunteer participation, and represent some of the
19 most successful public-private partnerships, protec-
20 tion of volunteerism through clarification and limita-
21 tion of the personal liability risks assumed by the
22 volunteer in connection with such participation is an
23 appropriate subject for Federal legislation;

24 (5) services and goods provided by volunteers
25 and nonprofit organizations would often otherwise be

1 provided by private entities that operate in interstate
2 commerce;

3 (6) due to high liability costs and unwarranted
4 litigation costs, volunteers and nonprofit organiza-
5 tions face higher costs in purchasing insurance,
6 through interstate insurance markets, to cover their
7 activities; and

8 (7) reform efforts should respect the role of the
9 States in the development of civil justice rules, but
10 recognize the national Government's role.

11 (b) PURPOSE.—The purpose of this Act is to promote
12 the interests of social service program beneficiaries and
13 taxpayers and to sustain the availability of programs, non-
14 profit organizations, and governmental entities that de-
15 pend on volunteer contributions by reforming the laws to
16 provide certain protections from liability abuses related to
17 volunteers serving nonprofit organizations and govern-
18 mental entities.

19 **SEC. 3. PREEMPTION AND ELECTION OF STATE NON-**
20 **APPLICABILITY.**

21 (a) PREEMPTION.—This Act preempts the laws of
22 any State to the extent that such laws are inconsistent
23 with this Act, except that this Act shall not preempt any
24 State law that provides additional protection from liability
25 relating to—

1 (1) volunteers or to any category of volunteers
 2 in the performance of services for a nonprofit orga-
 3 nization or governmental entity; and

4 (2) nonprofit organizations or governmental en-
 5 tities.

6 (b) ELECTION OF STATE REGARDING NON-
 7 APPLICABILITY.—This Act shall not apply to any civil ac-
 8 tion in a State court against a volunteer, nonprofit organi-
 9 zation, or governmental entity in which all parties are citi-
 10 zens of the State if such State enacts a statute—

11 (1) citing the authority of this subsection;

12 (2) declaring the election of such State that this
 13 Act shall not apply to such civil action in the State;
 14 and

15 (3) containing no other provisions.

16 **SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.**

17 (a) LIABILITY PROTECTION FOR VOLUNTEERS.—Ex-
 18 cept as provided in subsections (b) and (d), no volunteer
 19 of a nonprofit organization or governmental entity shall
 20 be liable for harm caused by an act or omission of the
 21 volunteer on behalf of the organization or entity if—

22 (1) the volunteer was acting within the scope of
 23 the volunteer's responsibilities in the nonprofit orga-
 24 nization or governmental entity at the time of the
 25 act or omission;

1 (2) if appropriate or required, the volunteer was
 2 properly licensed, certified, or authorized by the ap-
 3 propriate authorities for the activities or practice in
 4 the State in which the harm occurred, where the ac-
 5 tivities were or practice was undertaken within the
 6 scope of the volunteer's responsibilities in the non-
 7 profit organization or governmental entity; and

8 (3) the harm was not caused by willful or crimi-
 9 nal misconduct, gross negligence, reckless mis-
 10 conduct, or a conscious, flagrant indifference to the
 11 rights or safety of the individual harmed by the vol-
 12 unteer.

13 (b) CONCERNING RESPONSIBILITY OF VOLUNTEERS
 14 TO ORGANIZATIONS AND ENTITIES.—Nothing in this sec-
 15 tion shall be construed to affect any civil action brought
 16 by any nonprofit organization or any governmental entity
 17 against any volunteer of such organization or entity.

18 (c) NO EFFECT ON LIABILITY OF ORGANIZATION OR
 19 ENTITY.—Except as provided under subsection (e), noth-
 20 ing in this section shall be construed to affect the liability
 21 of any nonprofit organization or governmental entity with
 22 respect to harm caused to any person.

23 (d) EXCEPTIONS TO VOLUNTEER LIABILITY PRO-
 24 TECTION.—If the laws of a State limit volunteer liability
 25 subject to one or more of the following conditions, such

1 conditions shall not be construed as inconsistent with this
2 section:

3 (1) A State law that requires a nonprofit orga-
4 nization or governmental entity to adhere to risk
5 management procedures, including mandatory train-
6 ing of volunteers.

7 (2) A State law that makes the organization or
8 entity liable for the acts or omissions of its volun-
9 teers to the same extent as an employer is liable for
10 the acts or omissions of its employees.

11 (3) A State law that makes a limitation of li-
12 ability inapplicable if the volunteer was operating a
13 motor vehicle, vessel, aircraft, or other vehicle for
14 which the State requires the operator or vehicle
15 owner to possess an operator's license or to maintain
16 insurance.

17 (4) A State law that makes a limitation of li-
18 ability inapplicable if the civil action was brought by
19 an officer of a State or local government pursuant
20 to State or local law.

21 (5) A State law that makes a limitation of li-
22 ability applicable only if the nonprofit organization
23 or governmental entity provides a financially secure
24 source of recovery for individuals who suffer harm
25 as a result of actions taken by a volunteer on behalf

1 of the organization or entity. A financially secure
 2 source of recovery may be an insurance policy within
 3 specified limits, comparable coverage from a risk
 4 pooling mechanism, equivalent assets, or alternative
 5 arrangements that satisfy the State that the organi-
 6 zation or entity will be able to pay for losses up to
 7 a specified amount. Separate standards for different
 8 types of liability exposure may be specified.

9 (e) LIMITATION ON PUNITIVE DAMAGES OF VOLUN-
 10 TEERS, NONPROFIT ORGANIZATIONS, AND GOVERN-
 11 MENTAL ENTITIES.—

12 (1) GENERAL RULE.—Punitive damages may
 13 not be awarded against a volunteer, nonprofit orga-
 14 nization, or governmental entity in an action
 15 brought for harm because of the action of a volun-
 16 teer acting within the scope of the volunteer's re-
 17 sponsibilities to a nonprofit organization or govern-
 18 mental entity unless the claimant establishes by
 19 clear and convincing evidence that the harm was
 20 proximately caused by an action of such volunteer
 21 which constitutes willful or criminal misconduct, or
 22 a conscious, flagrant indifference to the rights or
 23 safety of the individual harmed.

24 (2) CONSTRUCTION.—Paragraph (1) does not
 25 create a cause of action for punitive damages and

1 does not preempt or supersede any State law to the
 2 extent that such law would further limit the award
 3 of punitive damages.

4 (f) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

5 The limitations on the liability of a volunteer, nonprofit
 6 organization, or governmental entity under this section
 7 shall not apply to any misconduct that—

8 (1) constitutes a crime of violence (as that term
 9 is defined in section 16 of title 18, United States
 10 Code) or act of international terrorism (as that term
 11 is defined in section 2331 of title 18) for which the
 12 defendant has been convicted in any court;

13 (2) constitutes a hate crime (as that term is
 14 used in the Hate Crime Statistics Act (28 U.S.C.
 15 534 note));

16 (3) involves a sexual offense, as defined by ap-
 17 plicable State law, for which the defendant has been
 18 convicted in any court;

19 (4) involves misconduct for which the defendant
 20 has been found to have violated a Federal or State
 21 civil rights law; or

22 (5) where the defendant was under the influ-
 23 ence (as determined pursuant to applicable State
 24 law) of intoxicating alcohol or any drug at the time
 25 of the misconduct.

1 **SEC. 5. LIABILITY FOR NONECONOMIC LOSS.**

2 (a) GENERAL RULE.—In any civil action against a
3 volunteer, nonprofit organization, or governmental entity
4 based on an action of a volunteer acting within the scope
5 of the volunteer's responsibilities to a nonprofit organiza-
6 tion or governmental entity, the liability of each defendant
7 who is a volunteer, nonprofit organization, or govern-
8 mental entity for noneconomic loss shall be determined in
9 accordance with subsection (b).

10 (b) AMOUNT OF LIABILITY.—

11 (1) IN GENERAL.—Each defendant shall be lia-
12 ble only for the amount of noneconomic loss allo-
13 cated to the defendant in direct proportion to the
14 percentage of responsibility of the defendant (deter-
15 mined in accordance with paragraph (2)) for the
16 harm to the claimant with respect to which the de-
17 fendant is liable. The court shall render a separate
18 judgment against each defendant in an amount de-
19 termined pursuant to the preceding sentence.

20 (2) PERCENTAGE OF RESPONSIBILITY.—For
21 purposes of determining the amount of noneconomic
22 loss allocated to a defendant under this section, the
23 trier of fact shall determine the percentage of re-
24 sponsibility of each person responsible for the claim-
25 ant's harm, whether or not such person is a party
26 to the action.

1 **SEC. 6. DEFINITIONS.**

2 For purposes of this Act:

3 (1) **ECONOMIC LOSS.**—The term “economic
4 loss” means any pecuniary loss resulting from harm
5 (including the loss of earnings or other benefits re-
6 lated to employment, medical expense loss, replace-
7 ment services loss, loss due to death, burial costs,
8 and loss of business or employment opportunities) to
9 the extent recovery for such loss is allowed under ap-
10 plicable State law.

11 (2) **HARM.**—The term “harm” includes phys-
12 ical, nonphysical, economic, and noneconomic losses.

13 (3) **NONECONOMIC LOSSES.**—The term “non-
14 economic losses” means losses for physical and emo-
15 tional pain, suffering, inconvenience, physical im-
16 pairment, mental anguish, disfigurement, loss of en-
17 joyment of life, loss of society and companionship,
18 loss of consortium (other than loss of domestic serv-
19 ice), hedonic damages, injury to reputation and all
20 other nonpecuniary losses of any kind or nature.

21 (4) **NONPROFIT ORGANIZATION.**—The term
22 “nonprofit organization” means—

23 (A) any organization described in section
24 501(c)(3) of the Internal Revenue Code of 1986
25 and exempt from tax under section 501(a) of
26 such Code; or

1 (B) any not-for-profit organization orga-
2 nized and conducted for public benefit and op-
3 erated primarily for charitable, civic, edu-
4 cational, religious, welfare, or health purposes.

5 (5) STATE.—The term “State” means each of
6 the several States, the District of Columbia, the
7 Commonwealth of Puerto Rico, the Virgin Islands,
8 Guam, American Samoa, the Northern Mariana Is-
9 lands, any other territory or possession of the Unit-
10 ed States, or any political subdivision of any such
11 State, territory, or possession.

12 (6) VOLUNTEER.—The term “volunteer” means
13 an individual performing services for a nonprofit or-
14 ganization or a governmental entity who does not re-
15 ceive—

16 (A) compensation (other than reimburse-
17 ment or allowance for expenses actually in-
18 curred); or

19 (B) any other thing of value in lieu of com-
20 pensation,
21 in excess of \$500 per year, and such term includes
22 a volunteer serving as a director, officer, trustee, or
23 direct service volunteer.

1 **SEC. 7. EFFECTIVE DATE.**

2 (a) IN GENERAL.—This Act shall take effect 90 days
3 after the date of enactment of this Act.

4 (b) APPLICATION.—This Act applies to any claim for
5 harm caused by an act or omission of a volunteer where
6 that claim is filed on or after the effective date of this
7 Act, without regard to whether the harm that is the sub-
8 ject of the claim or the conduct that caused the harm oc-
9 curred before such effective date.

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